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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/747,525 12/20/00 FURNER

P J-2992A

028165 QM02/1001
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EXAMINER

CLARKE, S	
ART UNIT	PAPER NUMBER

3743
DATE MAILED:

10/01/01

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/747,525

Applicant(s)

FURNER ET AL.

Examiner

Sara Clarke

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **3** MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12, 13 and 16-20 is/are rejected.
- 7) ☒ Claim(s) 10, 11 and 13-15 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)2)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed June 4, 2001, fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Objections

Claim 13 is objected to because it depends from itself. For purposes of treatment with respect to the prior art, this claim has been treated as though it depended from claim 12. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Oesterle et al. (US 2713256).

Oesterle et al. discloses the invention as claimed including a consumable wick 6 (see column 2, lines 31 and 32) and a bump 3 which engages said wick. See Figs. 3 and 4.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 12, 13, and 18-20 are rejected under 35 U.S.C. 103(a) as unpatentable over Oesterle et al. In the embodiments of Figs. 5-8, Oesterle et al. discloses the invention substantially as claimed with the exception of the disk being concave. In Figs. 1-4, the disk is disclosed as concave for the purpose of causing the flow of melted wax to the wick 13. See column 2, lines 41-47. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to provide the lamp of Figs. 5-8 with a concave disk as taught in Figs. 1-4 to cause the flow of melted wax to the wick.

Regarding claims 2, 3, and 6, the examiner takes official notice that the use of such solid fuels, including gels, solid waxes, and paraffin, in candles was well known to those of ordinary skill in the art.

As noted two paragraphs above, the structure of claims 12 and 13 is obvious in view of the Oesterle et al. reference. Therefore, the properties or functions of claims 12 and 13 are presumed to be inherent. See MPEP 2112.01.

In claims 19 and 20, the applicant's recitation of the melting plate being made of various specific metals presents no novel or unexpected result over the metal disclosed in Oesterle et al. Furthermore, the applicant has not presented any evidence that such

differences unexpectedly solve some problem or provide some new result in the art.

Therefore, the use of such specific metals in lieu of the general recitation of metal disclosed in Oesterle et al. would have been an obvious matter of design choice to one of ordinary skill in the art, and as such the claims do not patentably distinguish over the applied art at time of applicant's invention as one skilled in the art would have considered the change as an obvious matter of design choice.

Allowable Subject Matter


Claims 10, 11, 14, and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Contact Information

Any inquiry concerning this or earlier communications from the examiner should be directed to Sara Clarke whose telephone number is (703) 308-1388. The examiner can normally be reached on M-Thurs, 8:30-5:00, and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on (703) 308-1935. The fax phone numbers for the organization where this application is assigned are (703) 305-3463 for regular communications and (703) 308-7764 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0861.


Sara Clarke
Primary Examiner
Art Unit 3743

September 30, 2001